



# LUMMI INDIAN BUSINESS COUNCIL

2616 KWINA ROAD · BELLINGHAM, WASHINGTON 98226 · (360)384-1489

DEPARTMENT \_\_\_\_\_ EXT. \_\_\_\_\_

July 10, 2007

Mr. Jay Manning, Director  
Washington State Department of Ecology  
P.O. Box 47600  
Olympia, WA 98504-7600

**SUBJECT: Lummi Nation Interests in Bellingham Bay Clean Up and Redevelopment**

Dear Jay,

The purpose of this letter is to clarify the Lummi Nation's interests in the Bellingham Bay clean up and redevelopment effort and to explain our opposition to the conversion of the Aerated Stabilization Basin (ASB) to a marina by the Port of Bellingham. It was apparent from our June 19<sup>th</sup> meeting that we have not done an adequate job of informing people of our interests in this effort. As a result, elected and appointed officials may have a mistaken view that the Port's plans to convert the former ASB to a marina are unopposed.

The attached document details our interests. In summary, we want to maximize the removal of contaminated sediments in Bellingham Bay, we want at least the 33 acres of historic habitat and fishing areas that are currently impacted by the ASB to be restored, and we are not opposed to the redevelopment of upland areas of the former Georgia-Pacific pulp mill site in a manner that protects cultural and aquatic resources. We hope that you can support our goals. Please do not hesitate to contact our Natural Resources Department Director (Merle Jefferson, 360-384-2225) for further information regarding our interests in the Bellingham Bay portion of our traditional areas.

Sincerely,

Evelyn Jefferson, Chairwoman  
Lummi Indian Business Council

cc    The Honorable Senator Patty Murray  
      The Honorable Senator Maria Cantwell  
      The Honorable Representative Rick Larsen  
      The Honorable Governor Christine Gregoire  
      The Honorable State Senator Harriet Spanel  
      The Honorable State Senator Dale Brandland  
      The Honorable State Representative Kelli Linville

The Honorable State Representative Doug Erickson  
Elden Hillaire, Lummi Natural Resources Commission Chairman  
Merle Jefferson, Lummi Natural Resources Department Director  
Richard Grout, Washington Department of Ecology, BFO  
Dan Swenson, Washington Department of Ecology, NWRO  
Lucy McInerney, Washington Department of Ecology

## **Lummi Nation Interests in Bellingham Bay Clean Up and Redevelopment July 10, 2007**

The Lummi Nation is a fishing tribe and has used the waters and shorelines of Bellingham Bay since time immemorial. Prior to and following the arrival of Euro-Americans, the shorelines of Bellingham Bay were used as fishing villages and the tidelands and waters of Bellingham Bay were used to harvest fin- and shellfish for commercial, subsistence, and ceremonial purposes. Although the Lummi Nation still fishes the waters of Bellingham Bay, the resources have been degraded by human activities and shoreline development has precluded the use of traditional hunting, fishing, and gathering sites along the bay. As shown in Figure 1 and detailed in Figure 2, approximately 748 acres of the Bellingham Bay nearshore has been impacted (dredged, filled, or armored) including the Squalicum Marina, the Georgia Pacific pulp mill site, the Whatcom Waterway, and the Aerated Stabilization Basin (ASB). In addition to these actions, which have destroyed valuable fish habitat, physically precluded the exercise of tribal treaty rights in these areas, and were conducted without compensation or mitigation for these impacts to our way of life, the Whatcom Waterway, the ASB, and surrounding areas are contaminated with a number of substances released from industrial waterfront activities including mercury discharges from the former Georgia Pacific chlor-alkali plant.

The taking of our traditional hunting, fishing, and gathering areas in Bellingham Bay by the Port of Bellingham, the City of Bellingham, and others is just one of many examples of how our ability to exercise our treaty rights has been taken by others. Additional examples of actions by others that have taken, without compensation, our ability to exercise our treaty rights include the listing of early-run chinook salmon under the Endangered Species Act due to habitat degradation, the closure of Portage Bay shellfish harvest areas due to poor nutrient management practices in the Nooksack River basin, the continued trespass on tribal tidelands, and the reductions in water quantity and water quality that we depend on due to the land uses of others. Now, rather than restoring at least the approximately 33 acres of historic habitat and fishing areas that are currently impacted by the ASB, the Port of Bellingham wants to take this area too and continue to preclude tribal use.

The Lummi Nation has worked with numerous other federal, tribal, state, and local government agencies most recently on efforts to cleanup portions of Bellingham Bay since the 1990s. Numerous clean-up plans have been proposed over the years and a few cleanup actions have been implemented. Throughout these efforts, the Lummi Nation position has been that contaminated sediments should be removed from the aquatic environment and disposed of at an appropriate upland disposal site.

Specific concerns and issues that the Lummi Nation has regarding the current Bellingham Bay clean up and redevelopment plans are described in the correspondences listed in Table 1. These concerns and issues include: no evaluation of removing the ASB from the water with re-establishment of intertidal and shallow subtidal habitat and marine buffers and/or eelgrass, no consideration of either cumulative effects or environmental justice, and the use of current conditions as the baseline in evaluating alternatives rather than the more appropriate

environmental baseline that existed along what is now the Bellingham waterfront prior to the substantial anthropogenic impacts to this environment. Copies of the letters listed in Table 1 can be provided upon request. In more general terms, the Lummi Nation interests in the Bellingham Bay clean up and redevelopment can be summarized as follows:

1. The Lummi Nation does not oppose the redevelopment of the upland areas of the former Georgia-Pacific pulp mill and the overall goals of the Port of Bellingham and the City of Bellingham to clean up and convert this largely idle waterfront property to more beneficial uses. We believe that we are aligned with the City of Bellingham in that this clean up and redevelopment effort must be conducted in a manner that protects the environment, particularly any cultural resources that may exist on or adjacent to the site and the aquatic resources around the property.
2. The Lummi Nation supports the removal and proper disposal of all of the contaminated sediments from the Aerated Stabilization Basin (ASB), the adjacent Whatcom Waterway, and other contaminated sites along Bellingham Bay.
3. The Lummi Nation supports the removal of the entire rip-rap fill in Bellingham Bay used to build the ASB and the restoration of this area to eelgrass beds and fishing areas that existed prior to the construction of the ASB. This site was historically comprised of expansive eelgrass beds and remnants of these beds still exist along the exterior fringe of the ASB. This restoration activity is the same as Habitat Action No. 13 of the alternative sub-area strategies identified in the 2000 Comprehensive Strategy EIS developed by the Bellingham Bay Pilot Team (Pilot Team). The Pilot Team described Habitat Action No. 13 as the removal of the ASB from the water and establishment of intertidal and shallow subtidal habitat and marine buffers and/or eelgrass. As described in Appendix A of the 2006 draft Supplemental Environmental Impact Statement (SEIS) for the Bellingham Bay clean up, Habitat Action No. 13 would result in the single largest habitat gain (33 acres) of all of the actions identified by the Pilot Team.
4. The Lummi Nation opposes the conversion of the ASB to a marina. Due to the interference of recreational boat traffic on the ability of the Lummi Nation and its members to exercise treaty fishing rights, and the fact that a marina in the existing ASB location will not restore the historic eelgrass beds and will continue to preclude fishing in a 33-acre area, no additional marina facilities should be authorized in Bellingham Bay unless the impacts of this continued habitat degradation and additional boat traffic and moorage is mitigated to the satisfaction of the Lummi Nation.
5. The Lummi Nation believes that the Port of Bellingham must conduct a thorough environmental assessment of the impacts associated with converting the ASB to a marina. At a minimum, this environmental assessment should evaluate the “No Action” alternative (i.e., ASB continues as a wastewater treatment facility), the alternative described above as Habitat Action No. 13, the conversion of the ASB to a marina, and the conversion of the ASB to a contaminated sediment disposal site. This environmental assessment needs to thoroughly evaluate all of the environmental impacts of each alternative including cumulative impacts

and environmental justice issues associated with each alternative action. In the most recent scoping documents distributed by the Port of Bellingham, the Port of Bellingham considered the conversion of the ASB to a marina as a “No Action” alternative and apparently intends not to conduct an environmental assessment of the alternative uses of the ASB.

Table 1. Recent Lummi Nation Letters Regarding Bellingham Bay Clean Up and Redevelopment

<b>Letter</b>	<b>Subject</b>
Colonel Michael McCormick, District Engineer U.S. Army Corps of Engineers, September 8, 2006	Aerated Stabilization Basin (ASB) Impacts on Lummi Nation Treaty Rights
Ms. Lucille T. McInerney, P.E., Department of Ecology, December 8, 2006	Lummi Nation Comments on the October 10, 2006 Draft Remedial Investigation, Feasibility Study, and Supplemental Environmental Impact Statement: Bellingham Bay Comprehensive Strategy – Whatcom Waterway Cleanup Site
Mr. Andrew Maron, Alternate SEPA Official, Port of Bellingham, May 9, 2007	Lummi Nation Comments on the April 19, 2007 New Whatcom Redevelopment Project Environmental Impact Statement Draft Scoping Document

The Lummi Nation’s interests and policy regarding the Bellingham Bay clean up are expressed in a 1992 resolution adopted by the Lummi Indian Business Council (LIBC Resolution 92-126). Resolution 92-126 resolves that, “The policy of the Lummi Nation is to ensure no further loss of the resource base or of environmental quality, and to restore and enhance damaged areas within the Lummi homeland and territories.” Removal of the ASB and conversion of this area to eelgrass beds and fishing areas is consistent with this policy.

Representatives from the Lummi Nation have met with the City of Bellingham and the Port of Bellingham since 2004 in an effort to negotiate an agreement that would address our interests. We understand that the Port of Bellingham and the City of Bellingham believe that their proposed actions are not financially viable if they also have to adequately mitigate for their impacts to treaty rights. We disagree with this viewpoint, and believe that their proposed land uses/redevelopment plans can be modified in a manner that our interests can also be adequately addressed. In our view, the settlement discussions are at an impasse and we must now take political and legal steps to protect our interests.

In summary, we want to maximize the removal of contaminated sediments, we want at least the 33 acres of historic habitat and fishing areas that are currently impacted by the ASB to be restored, and we are not opposed to the redevelopment of upland areas of the former Georgia-Pacific pulp mill site in a manner that protects cultural and aquatic resources. We hope that you can support our goals. Please do not hesitate to contact the Lummi Natural Resources Department Director (Merle Jefferson, 360-384-2225) if you would like copies of the letters identified in Table 1 and/or further information regarding the Lummi Nation’s interests in the Bellingham Bay portion of our traditional areas.



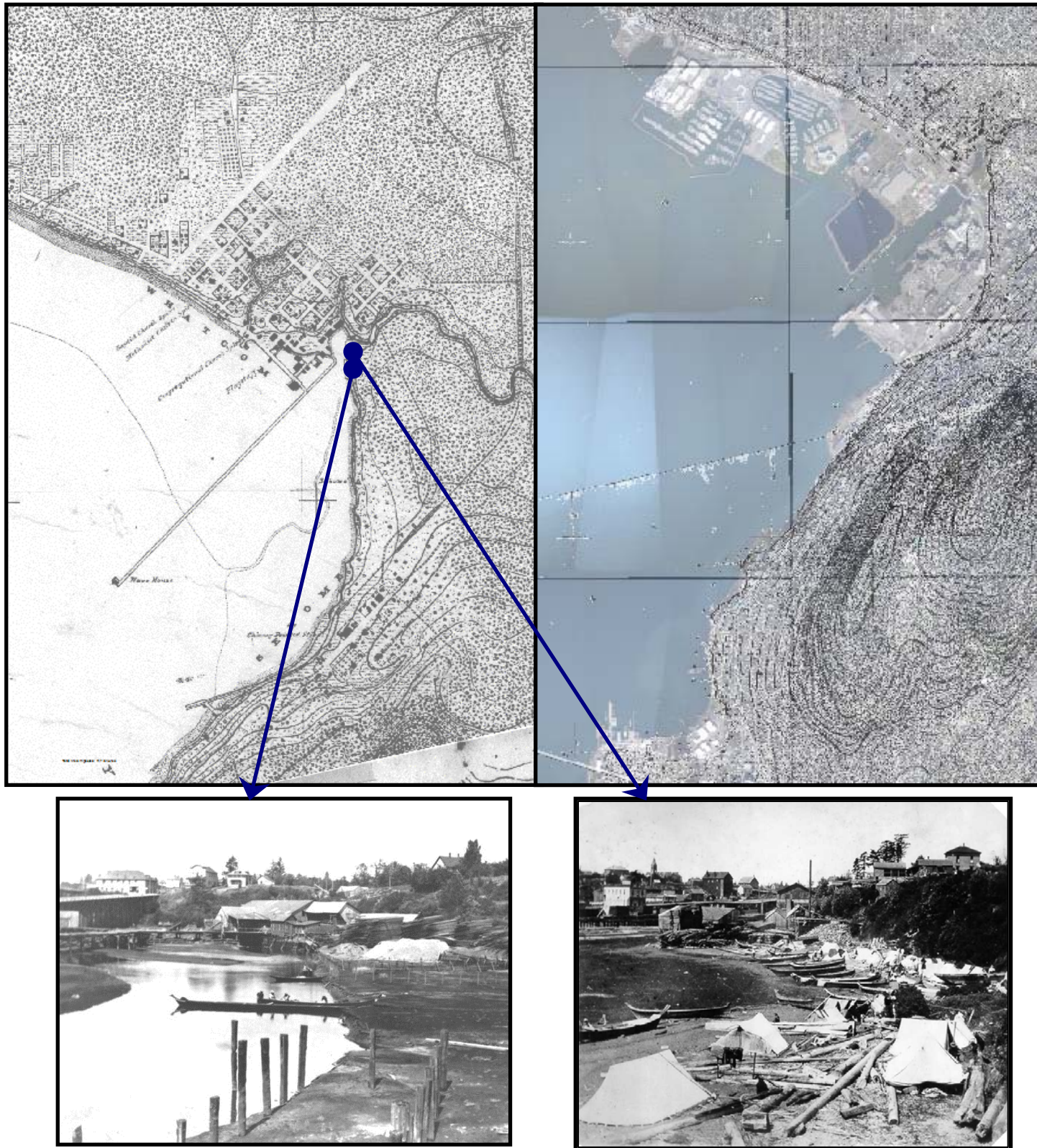


Figure 1. Bellingham Bay Nearshore Impacts



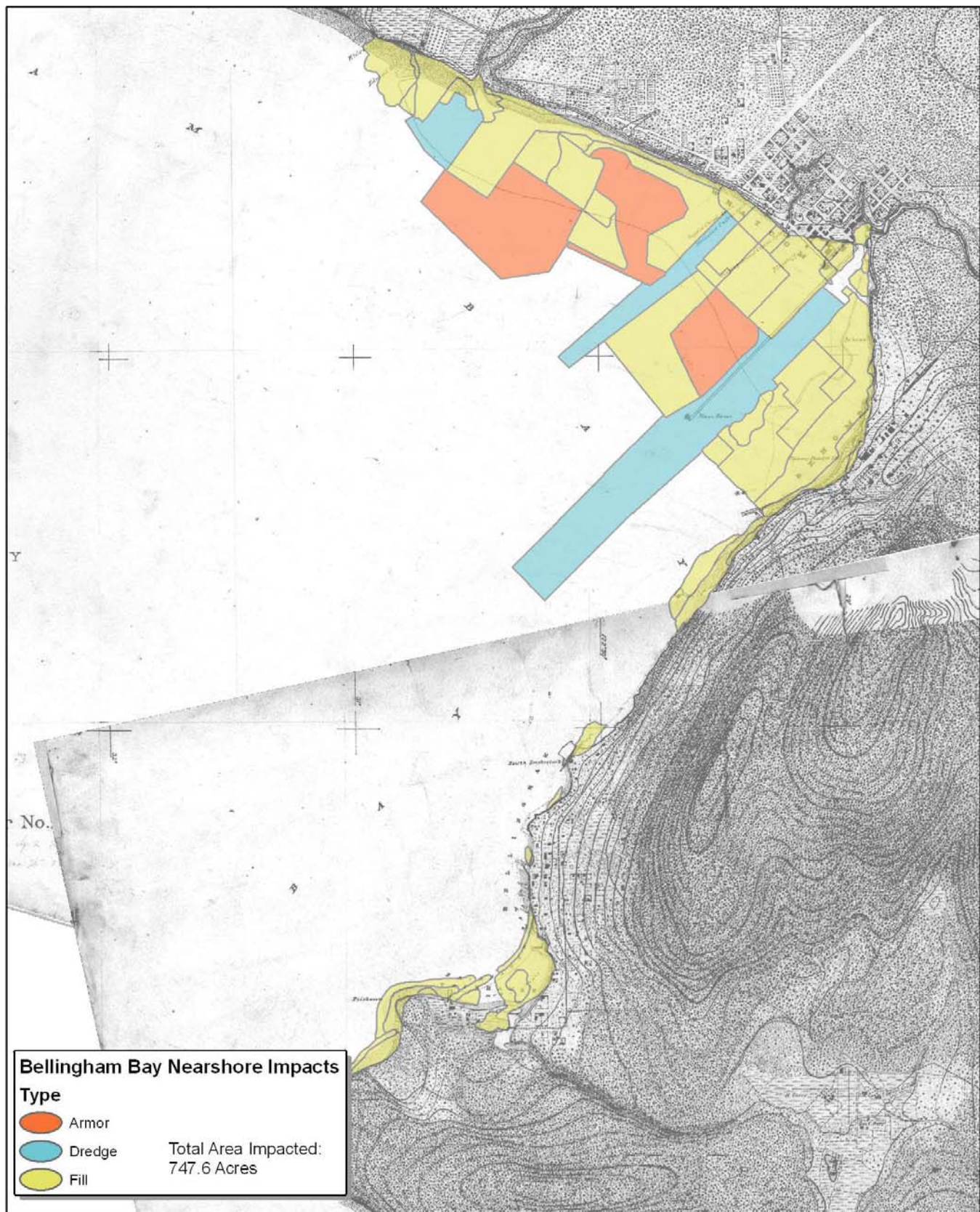


Figure 2. Bellingham Bay Nearshore Impacts